United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: August 9, 2000

TO : Robert H. Miller, Regional Director

Region 20

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

530-6083-2033-3000

SUBJECT: Laidlaw Transit Services

Case 20-CA-29531-1

This case was submitted for advice as to whether the $Employer^1$ violated Section 8(a)(5) of the Act by breaking off bargaining with the $Union^2$ over a successor collective-bargaining agreement on the ground that the extant agreement was renewed pursuant to the contract's automatic renewal clause.

The facts are fully set forth in the Region's Request for Advice. In brief, the parties' most recent contract, which had an expiration date of April 29, 2000, provided for automatic renewal unless either party gave written notice of its desire to terminate or modify not later than 60 days prior to the expiration date. In about March 1999, the Employer offered to give the employees a wage increase in return for the Union's help in assisting the Employer in obtaining a contract with the San Mateo County Transit District. The Union agreed. The Employer was awarded the contract in July, and the Union requested bargaining for the promised wage increase.

The parties began negotiations in August. At that time, the Employer stated that it could not agree to economic changes without negotiating the whole contract. The Union consulted the membership and agreed to reopen the contract. The parties held six bargaining sessions, during which they discussed a range of issues, including wages, health benefits, vacation, pension, sick leave, uniforms, a pension plan, and the term of the contract. By letter of December 8, the Employer wrote the Union setting forth its list of proposals for "settlement of a new and modified

¹ Laidlaw Transit Services.

² Local 1574, Amalgamated Transit Union.

agreement" between the parties. 3 The Union submitted a counter-proposal on certain issues and requested that contract negotiations continue until the parties reached agreement on a collective-bargaining agreement. By memorandum of February 24, 2000, the Employer advised the bargaining unit employees that it had agreed to early negotiations with the Union for a "new labor agreement" to improve their wages and benefits, but that the Employer intended to implement its final proposal on wages on February 27. The Union conducted a ratification vote and the employees rejected the Employer's proposal. The Union then requested that the parties return to the table and attempt to resolve the remaining obstacles "to reaching a full tentative agreement." On March 21, the Employer advised the Union that it had not reopened the agreement in accordance with its terms, and that the agreement was therefore renewed until April 29, 2001.

We conclude, in agreement with the Region, that the Employer violated Section 8(a)(5) by breaking off negotiations with the Union over a successor agreement because the parties had already engaged in negotiations for a new, successor agreement vitiating any need for either party to provide a formal, written notice for such bargaining.

It is settled law that "whatever the notice requirements, parties may mutually agree at any time to reopen a contract" and "permit the start of negotiations for a new agreement." In the instant case, the evidence shows that the parties did agree, eight months prior to the contract's expiration, to reopen the contract and to negotiate a successor agreement. Thus, in August 1999, the

³ The Employer's proposals included a wage increase, a change in the probationary period, changes in the calculation for seniority, designation of shop stewards, the assignment of overtime work, absenteeism, shift bidding, paid holidays, safety equipment, uniforms, life insurance, sick leave, vacation, lunch breaks, and contract duration.

⁴ B.C. Studios, Inc., 217 NLRB 307 (1975), citing General Electric Company, 173 NLRB 253, 256 (1968), enfd. 412 F.2d 512 (2nd Cir. 1969); Ship Shape Maintenance Co., Inc., 187 NLRB 289 (1970) (the employer, having already commenced negotiations 75 days before the contract's expiration date, waived the contractual requirements for 60-day written notice).

Union agreed to accept the Employer's demand that the parties negotiate the whole contract, and not just economic changes. By letter of December 8, the Employer set forth proposals for "settlement of a new and modified agreement" between the Union and the Employer. The Employer's proposals included virtually all aspects of the existing agreement, including a proposal that the new agreement have a duration of five years. Under these circumstances, we conclude that the parties did intend to bargain, and were engaged in bargaining over, a successor agreement.

Further, there is no dispute that the parties were still engaged in negotiations up to and beyond the contractual 60-day notice period. In these circumstances, we conclude that the actual negotiations, conducted through the notice period perforce brought the parties into compliance with the contract's technical notice provisions. The statutory 60-day notice provision is designed to ensure that the parties have sufficient time to reach agreement through bargaining before either party can exercise its right to engage in a strike or lockout. Since the parties

See <u>Bridgestone/Firestone</u>, <u>Inc.</u>, 331 NLRB No. 24 (May 22, 2000) (Parties were negotiating over a successor agreement, and not merely specific terms of the agreement, since the issues were tantamount to all mandatory subjects of bargaining. Thus, the fact that the union requested bargaining over the contractual "changes or revisions" procedure, and not its "notice of termination" procedure, was insufficient to constitute a contract bar to the employer's withdrawal of recognition); <u>South Texas Chapter</u>, <u>AGC</u>, 190 NLRB 383 (1971) (union's call for negotiation of "all matters pertaining to wages, hours and all conditions of employment" called for termination, rather than mere modifications or changes).

⁶ Compare <u>Connecticut Light and Power Co.</u>, 271 NLRB 766 (1984) where the parties were engaged in negotiations for mid-term modifications of the extant agreement. In contrast, the parties here were engaged in negotiations for a new, successor agreement.

⁷ See <u>Jet Line Products</u>, 229 NLRB 322, 322-23 (1977) (Employer's verbal agreement to accept union's specific proposals at later date forestalled automatic renewal of contract. "Section 8(d) was designed to eliminate the 'quickie strike' by providing a particular 60-day period during which unions may not strike and

here were already engaged in negotiations over a successor agreement, a notice of desire to negotiate would have been redundant.

Finally, the Employer's attempt to avoid further bargaining by claiming that the Union had failed to provide formal notice under the contract is disingenuous. Thus, it was the Employer who insisted that the parties negotiate an entire successor agreement, rather than limit bargaining to wages. Further, it was the Employer, as discussed above, who submitted written proposals covering virtually all aspects of the existing agreement and who acknowledged that the parties were bargaining over a "new and modified agreement." Under these circumstances, the parties actual negotiations made compliance with the technical 60-day notice requirement unnecessary.

Accordingly, complaint should issue, absent settlement, alleging that the Employer's refusal to bargain violated Section 8(a)(5).

B.J.K.